

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

WILLIAM JOHNSON,

Plaintiff,

v.

UNKOWN RICARDI, et al.,

Defendants.

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CASE No. 1:19-CV-254

HON. ROBERT J. JONKER

**ORDER APPROVING AND ADOPTING**  
**REPORT AND RECOMMENDATION**

This is a prisoner civil rights action. Plaintiff alleges that he received a special accommodation for permission to use a cotton (rather than wool) blanket due to allergies. Shortly after being transferred to the Oaks Correctional Facility, Plaintiff says Defendant Ricardi gave Plaintiff only one cotton blanket, even though MDOC policy provides that every prisoner was to receive two blankets. When he filed a grievance on the matter, Plaintiff says Defendant Russell cancelled his special accommodation and Defendant Ricardi confiscated his cotton blanket, forcing Plaintiff to endure the winter months without any blankets. Based on this alleged conduct, Plaintiff says Defendants Ricardi and Russell violated his First Amendment right to be free from unlawful retaliation and his Eight Amendment right to be free from cruel and unusual punishment. The matter is before the Court on two Reports and Recommendations filed by the Magistrate Judge in this matter concerning two respective motions for summary judgment by Defendants Ricardi and Russell.

## **1. Defendant Russell**

### *A. Plaintiff's Motion for Reconsideration*

On February 12, 2021, Magistrate Judge Green entered a Report and Recommendation that recommended granting Defendant Russell's motion for summary judgment and dismissing that defendant from the case. (ECF No. 56). Objections were due on March 19, 2021. On March 23, 2021, the Court entered an Order Approving and Adopting the Report and Recommendation after no objections were received. (ECF No. 60). Two days later, on March 25, 2021, objections dated March 16, 2021, and postmarked March 22, 2021, were filed on the docket. (ECF No. 61). Plaintiff has also moved for reconsideration of the Court's March 23rd order, asserting that his objections are timely under the Prison Mailbox Rule. (ECF No. 63).

Under the prison mailbox rule, a *pro se* prisoner plaintiff's motion is usually considered as filed at the time he or she "delivered it to the prison authorities for forwarding to the court clerk." *Houston v. Lack*, 487 U.S. 266, 276 (1988). Plaintiff's motion for reconsideration correctly analyzes the timing issue and submits documentation that demonstrates he complied with the prison mailbox rule for the timely filing of objections. Applying the prison mailbox rule, the Court considers Plaintiff's Objections as filed on March 16, 2021. They are, therefore, timely filed. For this reason the Court grants Plaintiff's motion for reconsideration to the extent it seeks consideration of his Objections; vacates the March 23, 2021 Order adopting the Report and Recommendation; and proceeds to review Plaintiff's objections. But based on a de novo review of the record, the Court finds no merit in Plaintiff's objections, and so the Court affirms its previous order adopting the Magistrate Judge's recommended disposition.

*B. Plaintiff's Objections Fail on a De Novo Review*

The Court has reviewed Magistrate Judge Green's Report and Recommendation in this matter (ECF No. 56) and Plaintiff's Objection to the Report and Recommendation (ECF No. 61). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

[t]he district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff's Objections. After its review, the Court finds that Magistrate Judge Green's Report and Recommendation is factually sound and legally correct.

Plaintiff's Objection raises several arguments, none of which disturb the Magistrate Judge's analysis. As the Magistrate Judge observed, Plaintiff has not created a genuine question of material fact about whether Defendant Russell acted with a sufficiently culpable state of mind to make out an Eighth Amendment deprivation claim. Similarly, there is no triable issue on the causation element of Plaintiff's First Amendment retaliation claim as to Defendant Russell. The Court agrees that Defendant Russell is entitled to summary judgment for the very reasons detailed

by the Magistrate Judge. On this record, the Court sees no reason to reject the Report and Recommendation.

## **2. Defendant Ricardi**

In a separate Record and Recommendation, the Magistrate Judge recommends denying Defendant Ricardi's Motion for Summary Judgment, which seeks summary judgment based on the statute of limitations. (ECF No. 69). The Magistrate recommends denying the motion because the statute of limitations on Plaintiff's claim was tolled while Plaintiff pursued his administrative remedies. The Report and Recommendation was duly served on the parties. No objections have been filed under 28 U.S.C. § 636(b)(1)(C). The Court agrees with the Magistrate Judge that the defense motion should be denied.

## **CONCLUSION**

### **ACCORDINGLY, IT IS ORDERED:**

1. The Court's March 23, 2021 Order (ECF No. 60) is **VACATED**.
2. Plaintiff's Motion for Reconsideration (ECF No. 63) is **GRANTED** to the extent specified in this Order.
3. The Report and Recommendation of the Magistrate Judge (ECF No. 56) is **APPROVED and ADOPTED** as the Opinion of the Court following a de novo review.
4. Defendant Russell's Motion for Summary Judgment (ECF No. 28) is **GRANTED** and the claims against her are dismissed.
5. The Report and Recommendation of the Magistrate Judge (ECF No. 69) is **APPROVED and ADOPTED** as the Opinion of the Court.

6. Defendant Ricardi's Motion for Summary Judgment on statute of limitations grounds (ECF No. 50) is **DENIED**.

7. Plaintiff's remaining claims against Defendant Ricardi shall proceed forward.

Dated: June 16, 2021

/s/ Robert J. Jonker  
ROBERT J. JONKER  
CHIEF UNITED STATES DISTRICT JUDGE